

Formal Submission &

Stat Dec Date 30/06/17

In the Public Interest and relevant to the DOP denial of Procedural Fairness

By N. Diamond as an Objector to

The Hume Coal Project SSD_7172 and

Rail Project SSD_7171

I Neville Diamond, environmental researcher, retired consultant, activist, whistle blower, and complainant to DOP of 110 Kissing Pt Rd Turrumurra 2074 (phone 0426 886 882) say on oath:

Executive Summary

1. The Department of Planning from my direct experience over the last two or three years directly relevant to SSD_4978 and MP 08_0225 MOD 1 and CP 08_0225 MOD 1 inter alia has clearly demonstrated the following:
2. The Department does not have the will, skill, ability, resources, or intent to properly manage the above developments let alone the possibility of properly managing SSD_7172 and SSD_7171 as they are understaffed (inter alia)

The EPA does not have the will, skill, ability, resources, or intent to properly manage the above developments let alone the possibility of properly managing SSD_7172 and SSD_7171 as they are understaffed (inter alia)

See Diamond's Stat Dec to DOP RE: Maladministration in DOP and EPA dated 18/12/2015 **please see and consider the 18/12 OverTure**

3. I bring to the attention of all parties the article from the front page of The Telegraph dated 02/05/15 where **Rob Stokes the former Planning Minister** stated words to the effect **"I do not understand the planning laws"** (inter alia)

See Annexure P. Admission by HON R Stokes RE: "I Don't Understand" etc.

Note. If the qualified Minister does not understand how can The Department?

4. Mr Stokes is a highly qualified former lawyer and lecturer in Planning and he stated **"This is perhaps a shocking admission for a planning minister to make, but as a person who's studied and worked in and reflected on the planning system for 20 years, I still don't understand the planning laws – and I'm the planning minister."**

Note To All Parties

I have attached a print out of the article from The Telegraph dated 02/05/15 FYI as Annexure P. at the end of this Stat Dec of 30/06/17 in opposition and will deliver hard copy to the Department ASAP

Again see and please consider Annexure P.

5. I agree, in part, with the former Minister for Planning but **I suggest in the strongest possible terms that the real issue lays in the ongoing failures of The Department in the assessment areas under State Significant Development**
6. Further to this the assessment section of The Department is grossly understaffed and although Howard Reed is an honest and professional officer, however due to severe underfunding he has been forced to rely on younger and less qualified assessment officers with little or no practical industry experience (as set out in my complaints)
7. There are similar issues due to lack of funding and staff shortages in compliance under Kirsty Ruddock (as set out in my complaints)
8. The ongoing failures of The Department's Compliance Unit is grossly under staffed and lacks, generally, enough suitably qualified and professional enforcement officers to properly manage the proposed underground Hume Coal Project

NOTE I say on oath I have made numerous complaints over the last 2 years, and none of them have been considered or in the alternative none of them have been properly investigated or considered

See and Please Consider Annexure R.

9. I say on oath that despite numerous complaints legitimately lodged under The Department's Complaints Policy, written submissions, some six meetings with compliance and or assessment.

I say on oath I have made numerous complaints over the last 2 years, and none of them have been properly investigated

Maladministration and The Associated Cover Up

I say on oath I supplied 4 volumes of compelling Prima Facie Evidence of Departmental maladministration to the Deputy Secretary Marcus Ray including Stat Decs and I have received no proper response

Up until the meeting of 06/06/17 at The Department's Headquarters, there has been no investigation of my complaints that false and misleading information was provided by both of the consultants in the EAs/ EISs for SSD_4978 for the Tinda Creek Mine and EFS 08_0225 and I still have serious concerns about the seriously flawed letter signed by Kirsty specifically but not limited to the data in the Box Section pages 1 to 8 apparently prepared for Kirsty's consideration (oops)
(no investigations no acknowledgement letter and no Departmental consideration)

Departmental Payback for Complaining

In payback I have been banned contrary to procedural fairness by the letter signed by Pheona Twist dated 26/06/17 Please See and Consider Annexure R.

NOTE TO ALL PARTIES

It was agreed with Cameron Smith from Governance that there will be a review of my black-ban for complaining for two years under 9.5 of the DOP Complaints Policy and I say on oath that I have been denied natural justice and Procedural Fairness in the five letters organised by incompetent staff operating under Marcus Ray, DEP. SEC. DOP I look forward to the review.

10. The Department does not currently employ a qualified hydrologist or a suitably qualified professional water expert.
11. It follows that without such a qualified professional, on balance, the Compliance section of The Department would be unable to enforce The Department's own consent (the evidence to this lays in The Department's current failure up until 06/06/17 to deal with complaints lodged by Diamond over the last 2 years against the mine referenced under SSD_4978)
12. Unfortunately The Department is broken up into several silos (or fiefdoms of bureaucrats) each with their own agenda.
13. Clearly from my experience as set out in my complaints over the last 2 years, each faction, or silo, rarely share all relevant information between compliance and assessment, directly relevant to ongoing maladministration as set out in volumes 1, 2, 3, & 4 provided to The Deputy Secretary of The Department.
14. **It is a sad situation that The Department contrary to its own complaints policy has failed to respond within the mandatory 5 days for acknowledgment of the complaint and unresolved and not investigated within the mandatory 21 days (Complaint Policy)**

15. It is a sad situation that The Department contrary to its own complaints policy has failed to even start an investigation of my complaints and this has been verified by the appropriate response from honest officers under FOI/GIPA (no investigation) If The Department is not dysfunctional **how do these things happen? And why haven't they been investigated?**

I require a written detailed explanation in the public interest and please be aware that it is a serious criminal offence to put false and misleading information to the DOP and or the public under Crimes Act 307 A B C and EPAA Regs 148 b

16. When The Department assesses (or more particularly fails to properly assess) the various management plans associated with SSD_4978 which include specifically but not limited to:

- Environmental Management Plans
- Water Management Plans
- Landscape Management Plans
- Transport Management Plans
- Heritage Management Plans
- Annual Audits (overdue)
- Independent Audit (overdue)
- etc. etc. etc.

There seems to be no coordination between compliance under Kirsty Ruddock and assessment under Howard Reed (See Letter 19/05/17 M Sprott RE: Approval)

NOTE TO ALL PARTIES

The best case example of this is in the case study for SSD_4978 and the associated approval to the developer's consultant in the letter from The Department dated 19/05/17

17. I respectfully bring all parties attention to the NSW Auditor General's Report with regard to assessments for rehabilitation guarantees as set out in the SMH article 15/06/17 under the heading:

Mine rehab plans 'fall short of best practice' Please See and Consider Annexure C

18. Directly relevant to this ongoing failure I bring to the attention of all parties the consent condition for the Tinda Creek Mine (SSD_4978) which states under Schedule 3 at 20. (in part) "within 6 months of the approval of the Landscape Management Plan the applicant shall lodge a conservation and rehabilitation bond"

Note To All Parties

Some two years after the consent for the Tinda Creek Mine SSD_4978 was granted on 10/04/2015 there has been no bond lodged despite the apparent approval of the Landscape Management Plan (LMP)

It should be noted, as a side issue, that the LMP is inextricably linked to the Water Management Plan (WMP) which has not been approved some 2 years after the consent.

How do these things happen?

How do these things happen if The Department is not dysfunctional?!?

19. I say on oath in my Stat Dec dated 15/05/17 to The Department (Compliance and Governance) I set out in page 22 H) the main issues for compliance and assessment relevant to The Department and the associated problems with enforcement by DOP and the EPA, and I bring to your attention now the almost total failure of the gross, systemic, maladministration in the EPA as set out, as a classic example of the EPA's incompetence in the study of the Final Report by Prof. Mark Taylor, BSc (Hons), PhD which is available to all parties by accessing

Review Email: contamsitesreview@mq.edu.au

Please See and Consider Annexure A.

20. Further to enforcement by The Department of Planning (DOP) or the EPA the most serious situation for any party if The Department was '**courageous**' (see Yes Minister) your attention is brought to the fact that the standard condition for any SSD as set out in case study SSD_4978 is that:

" TERMS OF CONSENT

2. The Applicant shall carry out the development generally in accordance with the:
- (a) EIS;
 - (b) Statement of Commitments; and
 - (c) conditions of this consent. "

It would be impossible for **any concerned citizen** to take action in the Land and Environment Court to remedy any breaches of consent under the anticipated approval of SSD_7172 on the basis that any breach of compliance would not be enforceable because of the above terms of consent considering the most amazing and complex 14 volumes of the EIS for Hume Coal

No reasonable person would have the economic capacity to sustain a successful approach to the honourable court

(Neville NOTE Expand if Approved for PAC and LEC Appeal)

As such it follows because of the complexity and depth of this most amazing EIS by EMM that any reasonable person would clearly understand that the consent could not possibly be enforced in any way, shape, or form

It would be a lawyers feast (plus) and any approval by The Department in its current dysfunctional state would be contrary to the spirit and intent of the EPAA and Regs, common law, and the previously stated policies of the NSW Government

21. In the public interest and relevant to procedural fairness I bring your attention to the following:

Relevant to the Rail Modification issue

I say on oath I visited the site in June 2017 and saw numerous dangerous rail crossings
I say on balance the safety issues around numerous crossings in, on, and around the Mine Proposal Area are a public safety risk and more trains (loaded with coal) will only exacerbate an existing public safety risk

WHAT HOPE... NO HOPE... If The Department Approves (courageously Yes Minister)

I say I saw numerous unsafe crossings with limited signage, if the NSW Government, State Rail, and The NSW Police cannot be bothered to fix this outstanding issue, what hope would the community have if the Hume Coal Project and Rain Infrastructure Project was approved by The Department that I have complained about relevant to ongoing maladministration and the associated noncompliance as set out in this Stat Dec

Relevant to Coal Dust

Further to this on my visit to Mossvale, Berrima, Bowral, etc.

I say on oath I was at Mossvale Station and spoke to senior station staff at length and they explained to me that they are forced to clean the seats on the railway platform several times a day to remove the dust from gravel trains and coal trains which is an ongoing problem.

Relevant to the Hume Coal Project

The only good thing I can say relevant to their positive decision to tarp or cap the coal trains I agree that this a major positive move, this however only goes to show how hopeless the EPA is in its ongoing negligent approach in dealing with the ever present coal dust issue and the total mismanagement by the EPA and The Department in the mishandling of the coal dust precipitations throughout the State of NSW

It is a ridiculous situation to consider approval contrary to the public interest

It is a ridiculous situation to even consider further expansion of any coal approvals as it is common knowledge that the coal industry in Australia is in decline.

And I say, on balance, the coal industry is opposed by the majority of Australians apart from;

- 1. Those employed in the industry**
- 2. Those directly involved in the industry (consultants etc.)**
- 3. Corrupt politicians previously involved in the industry (See ICAC and attachments at F.'n' K. etc.)**
- 4. Negligent Departmental Officers**

Coal is in Decline

Please See and Consider the recent TV advertisements by AGL

If The Departmental Officers fail to properly consider (and based on past performance) and I believe they will they will then write a glowing report to the secretary (which again based on the substance of material supplied in this Stat Dec) the Secretary (under the direction or the hand of Marcus Ray, Deputy Secretary, will then send that glowing report to the PAC for consideration

From my direct experience again a Departmental Officer (with no coal or industry experience) will then recommend a course of action to the PAC. As they did in EFS (with no consideration of the cogent and compelling submissions which had been ignored by incompetent Departmental Staff the subject of my complaints (still un-investigated as at 06/06/17)

Water Issues

There is a serious issue for Hume Coal in that they do not have, as per the EIS, enough licenced water at this stage

It follows that until such time as they obtain all the water required to operate under Departmental Policy (See Howard Reed Statements) they cannot (compliant with any consent DOP, EPA, or NOW Approval, etc.) commence operations at law

Further to this the EIS falsely and incompetently suggests that there will be possible compensation (or fix up) including digging deeper wells for affected neighbours, etc.

I say on oath that this suggestion is a fantasy and a falsehood on the basis that the neighbouring bores are manually dipped and presumably there will be limited records of the ground water levels and under the **onus of proof** the neighbours would have limited chance of proving that they have been affected and negatively impacted

It follows talk of compensation for effected parties is a sad joke.

22. I Verily Believe;

- I believe that The Department has already made up its mind to approve
- There is the major issue of corrupt NSW politicians complicit with Coal (See ICAC)
- I believe there is an issue relevant to Political Donation Statements (by others)
- I believe The Department Officers, based on my experience with the two (2) Case Studies in this submission, have already decided to approve because of the endemic culture to approve and The Department will ignore the submissions made in opposition
- The EPA is generally negligent and incompetent See Annexure A. B. E. J.
- I believe The Department is generally pro-development, biased towards the proponent.

- I believe The Department and the EPA are grossly underfunded and understaffed
- The Department and the EPA are incapable of enforcing any consent for Hume Coal as set out above. **See Attached Annexures RE: maladministration by EPA & DOP**

I will deliver a hard copy with Annexures to The Department Next Week, N. Diamond

Page 22. H)

Submission against State Significant Project for Hume Coal and associated Formal Complaint.

Relevant to the systemic denial of procedural fairness. I say on oath relevant to procedural fairness:

- The Department of Planning does not have the will, skill, ability, or resources to properly enforce any consent granted by The Department
- The EPA does not have the will, skill, ability, or resources to properly enforce any licence granted by the EPA to Hume Coal
- It is of concern that Mr Hartcher, the disgraced Minister granted a coal exploration licence to POSCO after a notable visit to Korea
- We respectfully recommend all parties consider the front page of The Daily Telegraph dated 02/08/16
- We respectfully recommend all parties consider the findings of the NSW Auditor General relevant to mismanagement by State Planning relevant to inadequate rehabilitation bonds for coal mines (and sand quarries?) as set out in The Herald article dated 13/05/17
- **We respectfully recommend all parties consider Diamond's numerous complaints to The Department of Planning as set out in the Stat Decs dated 18/12/15, 15/05/15, and 06/06/17 for proof, positive that The Department of Planning is grossly understaffed**
- Diamond can be contacted on 0426 886 882 from 9 to 5 (no private numbers)
- I Neville Diamond have lodged numerous complaints to the Department of Planning, the EPA, and specifically but not limited to; Marcus Ray, Anthea Sargent, and DOP Compliance over the last two years, and those complaints in general have not been investigated. However they are now being investigated by a new honest governance officer and a new honest compliance team. Better late than never.
- I say there is a systems failure under the Environmental Planning and Assessment Act as confirmed by the Honourable Minister for Planning Rod Stokes where he

publicly acknowledged, on the front page of The Daily Telegraph (02/05/15), that failure where he stated that, as Minister a lawyer and a Planner, he did not understand the planning laws of NSW

- I agree with Rod Stokes in that for all intents and purposes there is a systematic failure in the planning system the governance and the enforcement, and in the compliance, or more particularly the inability of the community to have consents enforced.
- The system continually fails and the process is set out on page 41 in the Preliminary Environmental Assessment (PEA)

Procedural Fairness

- **I say the NSW Government is addicted to coal and the associated royalties**

- **It follows I say that The Department of Planning is equally infected by that addiction**

- Equally the EPA has an unwritten policy of non-enforcement, which is demonstrated by my Case Studies on EFS (+ Tinda Quarry) (which has polluted the Windsor High, the Hospital contrary to EPA licence and over 2,000 complaints with impunity), supplied to The Department in my submission RE: The Coal Industry dated 09/07/15
- The EPA is incompetent, under staffed and useless for all intents and purposes and will not be able to enforce a licence because as I see it the tailings and the chemical pollution will be buried
- The Department of Planning's Compliance team is cooperative but understaffed and grossly underfunded considering the fact that there is a need to properly supervise some 1,600 developments under State Significant etc. **It is just bloody impossible.**
- I say that on balance, **from my experience**, The Department has already made up its mind to approve the development SSD7172 because the NSW government is addicted to coal and the associated financial benefits from the royalties etc.
- The NSW Government and The Department of Planning have an atrocious record as confirmed by the article in The Herald 13/05/17 which states in part;

"A report last week by the NSW Auditor-General found that state's mine rehabilitation guarantees held by the government to be inadequate and requirements for restoring land after a mine's closure to be vague."

- The Former Premier the honourable Mike Baird apologised on the front page of The Telegraph dated 31/08/16 where he admitted the NSW Government failed

miserably to deal with the proper administration of the coal industry under the former NSW Minister Ian Macdonald and the Obeids and the notionally corrupt politicians (see ICAC)

- I refer all parties to page 41 of the Preliminary Environmental Assessment RE: Process
- The problem for the community lies in the fact that The Department fails to test under;
 - Point 2 relevant to pre-focus meetings with no public involvement RE: assessments
 - Point 3 RE: stake holder involvement in the SEARs (the documentation unavailable)
 - Point 4 **the draft EIS is not available to the stakeholders**
 - Point 5 the problem is the review is undertaken by junior and arguably unqualified DP&E officers as in my case examples: Elf Farm Supplies (EFS) and Tinda Creek Quarry the subjects of numerous complaints still not investigated after two years!
 - Point 6 the current SSD7172 EIS is virtually impossible to understand for a reasonable person to understand as it is too vague, too complex, and too long
 - **Point 6 Gilpin in his review (DUAP 1996) suggested the need for a basic simple clear and compelling need for the EIS to be understood THIS EIS FAILS THE TEST.**
 - Point 7 The DP&E will 'allegedly' forward your responses to the proponent for comment but in the Case Study I provided to The Department on EFS a junior part-time and incompetent Planning Officer (corruptly) summarised my detailed submissions and this issue is currently (after a 2 year delay) being investigated now
 - **Point 7 again** this State Significant Development as detailed in the 14 volumes of the EIS is extremely complicated and contains seriously heavy duty technical reports but it is seriously flawed in that, at a later date, if there is any noncompliance with the consent by the operator the residents and/or the Stakeholders would never be able to enforce the consent.
 - **The reason for this is simply the community could not afford to pay for the monumental costs of employing and paying for Barristers, Solicitors, and Consultants to counter-act EMMs, experts because The Department inevitably will tie the consents to compliance with the EIS (it's a really good trick for DOPE)**
 - Point 8 again from my knowledge and experience The DOPE/DP&E possibly junior part-time with no direct mining experience will be part of the assessment team
 - Point 9 obviously this will go to the PAC and then we will lose merit appeal rights
 - **Point 10 The DP&E formulate consent conditions only they (DOPE) can enforce**

NOTE TO ALL PARTIES

From my direct experience in dealing with the Department of Planning, there are a few extremely honest officers but The Department is grossly understaffed

There is a serious issue and I would suggest that there is a problem with the various fiefdoms, that is there are various sections or pillars which do not liaise with each other

Departmental Maladministration

Departmental Maladministration ongoing

Departmental Maladministration and associated cover up

The best example of this lays in the fact that assessment does not cooperate with compliance for any existing operation which is expanding

But the worst example of DOP maladministration lays in my complaints relevant to The Department in volumes 1, 2, 3, 4, and 5 which The Department refuse to investigate up until 06/06/17

One of the chronic issues of systemic failure is that The Department has hired some junior part-time and incompetent officers with no mining experience (inter alia) and these bureaurats are simply computer cut and paste 'experts' who siphon from the EIS

The EPA is understaffed, negligent, and incompetent for all intents and purposes And has no capacity (or in the alternative little capacity) to enforce any EPA licence for Hume Coal

Further to this I say on oath POSCO has serious ongoing human rights abuses in overseas operations including but not limited to slavery, criminal behaviour, and abuse of human rights as documented by the USA State Department and others on the internet I say on oath it follows the EPA cannot grant a licence under EPA policies to a party who is not of good character

It follows that Hume Coal cannot obtain an EPA licence as explained above and it follows that in the public interest The Department of Planning cannot grant approval if the Departmental officers act in the public interest and compliant with their own personal contracts of employment as set out in the DOP Code of Conduct

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- I believe The Department Officers, based on my experience with the two (2) Case Studies in this submission, have already decided to approve because of the endemic

culture to approve and The Department will ignore the submissions made in opposition

- The EPA is generally negligent and incompetent See Annexure A. B. D. E. J. (etc.)
- I believe The Department is generally pro-development, biased towards the proponent.
- I believe The Department and the EPA are grossly underfunded and understaffed
- The Department and the EPA are incapable of enforcing any consent for Hume Coal as set out above. **See Attached Annexures RE: maladministration by EPA & DOP**
- Any consent granted by The Department would be unenforceable by any concerned citizen because of the ridiculous size of the EIS of 14 volumes and thousands of pages which most people could not read or understand and that of course would include lawyers, possibly judges, (simply EMM over egged it)

I will deliver a hard copy with Annexures to The Department Next Week, N. Diamond